



# *COMMONWEALTH of VIRGINIA*

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Thomas A. Faha  
Regional Director

**STATE AIR POLLUTION CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
MICHIGAN COGENERATION SYSTEMS, INC.  
FOR  
LORTON FACILITY  
Registration No. 71961**

## **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Michigan Cogeneration Systems, Inc. regarding the Lorton Facility for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

## **SECTION B: Definitions/**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Facility" means the Michigan Cogeneration Systems, Inc. facility, located at 9850 Furnace Road in Lorton, Virginia which is located in Fairfax County, Virginia.
5. "Michigan Cogeneration" or means Michigan Cogeneration Systems, Inc. a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Michigan Cogeneration Systems, Inc. is a "person" within the meaning of Va. Code § 10.1-1300.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "Permit" means a Title V Federal Operating permit to operate a landfill gas engine-driven generator facility which was issued under the Virginia Air Pollution Control Law and the Regulations to Michigan Cogeneration Systems, Inc. on December 4, 2012 and modified on March 25, 2016.
9. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Michigan Cogeneration owns and operates the Facility in Lorton, Virginia. The Facility operates eight internal combustion engines which combust landfill gas generated by the closed I-95 Municipal Solid Waste Landfill to produce electricity for sale. The Facility is the subject of the Permit which allows the Facility to operate pursuant to its terms.
2. On February 26, 2016, Department staff conducted a partial compliance evaluation (PCE) of the Facility's Semi Annual Monitoring Report for July 1 – December 31, 2015, and the Title V Compliance Certification Report dated February 16, 2016 for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:

- a. In July 2015 the Phase I temperature recording device power supply malfunctioned and the Facility operated for 28 days, from July 1, 2015 through July 28, 2015, without a temperature monitoring device. The Facility could not provide DEQ with temperature monitoring records for this timeframe.
  - b. In December 2015, the Phase II temperature recording device malfunctioned and the Facility operated for 20 days, from December 1 through December 20, 2015, without a temperature monitoring device. The Facility could not provide DEQ with temperature monitoring records for this timeframe.
  - c. Michigan began monitoring for Carbon Monoxide in lieu of temperature during the first quarter of 2015.
3. Condition 4 of the Permit states that the exhaust stack of each engine shall be equipped with a device to monitor temperature of the exhaust gases. The device shall be accurate to within five percent.
4. Condition 5 of the Permit states that each engine shall be operated such that the temperature in the exhaust stack of each engine is maintained within +/- 50°F of the temperature as determined during the most recent stack test. An alternative range may be established based on the results of testing conducted in accordance with Condition 20 provided the Regional Air Compliance Manager of the DEQ's NRO in advance, agrees upon the alternative. This condition applies at all times except start-up and shutdown.
5. On March 10, 2016, based on the evaluation and follow-up information, the Department issued Notice of Violation No. ANO000353 to Michigan Cogeneration for the violations described in paragraphs C(2) through C(4) above.
6. On April 1, 2016, Michigan Cogeneration submitted a written response to the NOV stating that the equipment that failed had been in service for more than ten years and had become obsolete and irreparable, and the new unit took three weeks to arrive onsite. Michigan Cogeneration now has decided to stock a spare unit onsite.
7. Based on the results of review of the the Facility's Semi Annual Monitoring Report for July 1 – December 31, 2015, and the Title V Compliance Certification Report dated February 16, 2016, the Board concludes that Michigan Cogeneration has violated Permit Conditions 4 and 5 as described in paragraphs C(2) through C(4) above.
8. Michigan Cogeneration has submitted documentation that verifies that the violations described in paragraphs C(2) through C(4) above, have been corrected.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Michigan Cogeneration, and Michigan Cogeneration agrees to pay a civil charge of \$4,641.98 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Michigan Cogeneration shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Michigan Cogeneration shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Michigan Cogeneration Systems, Inc. for good cause shown by Michigan Cogeneration Systems, Inc., or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Michigan Cogeneration Systems, Inc. admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Michigan Cogeneration Systems, Inc. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Michigan Cogeneration Systems, Inc. declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives

the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Michigan Cogeneration Systems, Inc. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Michigan Cogeneration Systems, Inc. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Michigan Cogeneration Systems, Inc. shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Michigan Cogeneration Systems, Inc. shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Michigan Cogeneration Systems, Inc.. Nevertheless, Michigan Cogeneration Systems, Inc. agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Michigan Cogeneration Systems, Inc. has completed all of the requirements of the Order;
  - b. Michigan Cogeneration Systems, Inc. petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Michigan Cogeneration Systems, Inc..

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Michigan Cogeneration Systems, Inc. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Michigan Cogeneration Systems, Inc. and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Michigan Cogeneration Systems, Inc. certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Michigan Cogeneration Systems, Inc. to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Michigan Cogeneration Systems, Inc..
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Michigan Cogeneration Systems, Inc. voluntarily agrees to the issuance of this Order.

Consent Order

Michigan Cogeneration Systems, Inc.; Registration Number 71961

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And it is so ORDERED this 24<sup>th</sup> day of August, 2016.



Thomas A. Faha, Regional Director  
Department of Environmental Quality

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Michigan Cogeneration Systems, Inc. voluntarily agrees to the issuance of this Order.

Date: August 16, 2016 By: Richard M. Diga, President  
(Person) (Title)  
Michigan Cogeneration Systems, Inc.

Commonwealth of Virginia  
City/County of Oakland

The foregoing document was signed and acknowledged before me this 16<sup>th</sup> day of August, 20 16, by Richard M. Diga who is president of Michigan Cogeneration Systems, Inc., on behalf of the corporation.

Kelli Marie Bokoch  
Notary Public

Registration No.

KELLI MARIE BOKOCH  
NOTARY PUBLIC - STATE OF MICHIGAN  
COUNTY OF OAKLAND  
My Commission Expires April 17, 2020  
Acting in the County of Oakland

My commission expires: 4/17/2020

Notary seal: